April 25 1870

Submitted 23

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 207

THE BOARD OF SUPERVISORS OF POWESHIEK COUNTY, IOWA, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES, EX REL. THOMAS C. DURANT.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

FILED JANUARY 12, 1869.

Argued

Jan 31 1870

25

SUPREME COURT OF THE UNITED STATES.

No. 428.

THE BOARD OF SUPERVISORS OF POWESHIEK COUNTY, IOWA, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES, EX REL. THOMAS C. DURANT.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

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1 Pleas and proceedings had in the circuit court of the United States for the district of Iowa, at the regular term thereof, begun and held at the city of Des Moines, in said district, on the 20th day of October, A. D. 1868, the

Hon. S. F. Miller, circuit judge, presiding;
" J. M. Love, district judge.

2 Be it remembered that heretofore, to wit, on the 17th day of October, A. D. 1867, there was filed in the office of the clerk of the circuit court for the district of Iowa, a petition for mandamus in words and figures following, to wit:

THE UNITED STATES, EX REL. Thomas C. Durant, *v.* THE BOARD OF SUPERVISORS OF Poweshiek County, Iowa. } Mandamus.

3 No. 480.—Filed Oct. 17, 1867.

UNITED STATES, *District of Iowa, ss:*

To the circuit court of the United States for the district of Iowa:

Your relator, Thomas C. Durant, a citizen of the city and State of New York, represents to and informs this court that on the 16th day of May, A. D. 1867, this court, in an action therein pending, wherein your relator was plaintiff, and the county of Poweshiek, a municipal corporation existing under the laws of Iowa, and a citizen of the State of Iowa, was defendant, rendered judgment in favor of your relator for the sum of fifty-seven thousand one hundred and two dollars & fifty cents, together with costs against said defendant; that this court had full jurisdiction of said suit and of the parties thereto, and said judgment is still in full force and is wholly unsatisfied; that execution thereon has issued to the marshall of said district, and been by him returned wholly unsatisfied; that said defendant has no property subject to execution, or out of which said judgment may be satisfied.

That said judgment was rendered wholly upon coupons, or interest warrants, attached to divers coupon bonds issued by said county of Poweshiek, and dated on the 28th day of November, 1858, to pay

4 the subscription of said county to the capital stock in the Mississippi & Missouri Railroad Company, to aid in the construction of its railroad through said county.

That said subscription was made, and said bonds issued therefor, in pursuance of a proposition duly & legally submitted to the legal voters of said county, by the county judge of said county, at an especial election duly appointed therefor, and held on the 19th day of November, 1858; at which election, held in the several townships of said county, the said proposition was adopted by a large majority of the voters of said county; that the proposition so submitted & adopted was to the effect that said county should aid in the construction of said railroad within the limits of said county by subscribing one hundred thousand dollars of stock in said railroad company; that county bonds should be issued therefor and in payment of said subscription to the amount of such subscription, which bonds should bear interest at the rate of ten per cent. per annum, & be payable in twenty years; that an annual tax, not exceeding five mills on the dollar, be levied for the payment the

interest semi-annually on said bonds; that after ten years the
5 rate of tax for such purpose be increased to an amount not exceeding one per cent. on the taxable property within said county, for the purpose of paying off said bonds and interest, to be continued until said bonds & interest are all paid; provided that the county judge of said county may reduce the said rates in each year, in case the same will yield more than the amount required for said purpose in each year, but the rate shall in no case be less than sufficient to meet the payment of said interest and principal; that the proceedings of said county judge & court, including the submission and adoption of said proposition as aforesaid, were duly recorded in the office of the said county judge; whereupon, by the law of Iowa, such proposition acquired all the force & effect of a public statute.

That by the laws of Iowa the board of supervisors of said county have succeeded to all the powers & duties of said county judge & other officers respecting the levy of taxes, and it is their duty to levy all taxes to be collected within said county for county or State purposes, upon all the taxable property within said county, the assessed valuation of which is about two million of dollars; that said board annually levy taxes for other purposes, and it is and has been for seven years last past to
levy an annual tax upon all of said taxable property for the pur-
6 pose of paying said and interest, which the said board have hitherto wholly refused & still refuse to levy the same or any part thereof, although expressly requested so to do; that your relator has requested said board to levy sufficient tax to pay said judgment, which is also refused; that your relator is still the owner of said judgment; that the said several bonds upon which said judgment was rendered recites & certifies that they were issued by virtue of said vote of the lawful electors of said county, authorizing the same & an annual levy of taxes as aforesaid to pay the same & interest thereon, which certificate is part of the bonds so issued, signed by the said county judge, under the seal of said county, & attested by the county clerk, and the obligation to levy such tax was part and parcel of the contract; that said bonds & coupons were made negotiable, payable to bearer in the city of New York; that your relator purchased said bonds upon the faith of said vote & contract so to levy such tax to pay the same, and he is entitled to have sufficient levied by said board to pay his said judgment, and has no remedy except to compel the levy of such tax by the mandate of this court.

He, therefore, prays that an alternative writ may issue command-
7 ing the said board of supervisors to levy such tax sufficient for the purpose of paying your relator's said judgment, or to show sufficient & legal cause for not so doing.

EDMONDS & RANSOM,
For Relator.

STATE OF IOWA, *Johnson County, ss:*

I, J. B. Edmonds, being duly sworn, say that, as one of the firm of Edmonds & Ransom, I, as attorney for above-named relator, procured judgment referred to in above information, & made request for levy of tax by said board of supervisors, and that said information is true, as I verily believe.

J. B. EDMONDS.

Subscribed by J. B. Edmonds in my presence, & sworn by him before me, this 15th day of October, 1867.

[SEAL] WILLIAM E. CRUM.

8 And afterwards, to wit, on the 17th day of October, A. D. 1867, the same being of the October term of said circuit, the following was entered of record, to wit:

THE UNITED STATES, EX REL. Thomas C. Durant, *v.* THE BOARD OF SUPERVISORS OF Powesheik County, Iowa. } No. 480.—Law.

This cause now coming on for hearing—Edmunds & Ranson for plaintiff, and file their information, praying of a writ of mandamus; and thereupon the court doth order that an alternative writ of mandamus issue in accordance with the prayer of the information, returnable at the next term of this court.

9 And afterwards, to wit, on the 17th day of October, A. D. 1867, there issued out of the clerk's office of said court a writ of alternative mandamus in words and figures following, to wit:

10 480.—Filed May 12, '68.

UNITED STATES OF AMERICA, *District of Iowa:*

The President of the United States to the board of supervisors of Poweshiek County, greeting:

Whereas it has been suggested to us that Thomas C. Durant, relator, a citizen of the State and city of New York, on the 16th day of May, A. D. 1867, in this court, in an action wherein said relator was plaintiff, and the county of Poweshiek, a municipal corporation existing under the laws of Iowa, and a citizen of the State of Iowa, was defendant, recovered judgment for the sum of fifty-seven thousand one hundred and two dollars & fifty cents, together with costs, against said defendant; that this court had full jurisdiction of said suit & of said parties thereto, and said judgment is still in full force, and is wholly unsatisfied; that execution thereon has issued to the marshall of said district, and been by him returned wholly unsatisfied; that said defendant has no property subject to execution, or out of which said judgment may be satisfied; that said judgment was rendered wholly upon coupons or interest warrants, attached to divers coupon bonds issued by said county of Poweshiek, and dated on the 26th day of November, 1858, to
11 pay the subscription of said county to the capital stock in the Mississippi & Missouri Railroad Company, to aid in the construction of its railroad through said county; that said subscription was made, and said bonds issued therefor, in pursuance of a proposition duly & legally submitted to the legal electors of said county, by the county judge of said county, at an especial election duly appointed therefor, and held on the 19th day of November, 1858; at whichelection, held in the several townships of said county, the said proposition was adopted by a large majority of the voters of said county; that the proposition so submitted and adopted was to the effect that said should aid in the construction of said railroad within the limits of said county, by subscribing one hundred thousand dollars of stock in said railroad company; that county bonds should be issued therefor, and in payment of such subscription, to the amount of such subscription, which bonds should bear interest at

the rate of ten per cent. per annum, & be payable in twenty years; that an annual tax, not exceeding five mills on the dollar, be levied for the payment of the interest, semi-annually, on said bonds; that after ten years the rate of tax for such purpose be increased to an amount not exceeding one per cent. on the taxable property within said county
12 for the purpose of paying off said bonds and interest, to be continued until said bonds & interest are all paid; provided that the county judge of said county may reduce the said rates in each year in case the same will yield more than the amount required for said purpose in each year, but the rate shall in no case be less than sufficient to meet the payment of said interest and principal.

That the proceedings of said county judge & court, including the submission and adoption of said proposition as aforesaid, were duly recorded in the office of the said county judge whereupon, by the law of Iowa, such proposition acquired all the force & effect of a public statute; that, by the laws of Iowa, the board of supervisors of said county have succeeded to all the powers & duties of said county judge, & other officers, respecting the levy of taxes, and it is their duty to levy all taxes to be collected within said county for county or State purposes, upon all the taxable property within said county, the assessed valuation of which is about two million of dollars; that said board annually levy taxes for other purposes, and it is, and has been for seven years last past, its duty to levy an annual tax upon all of said taxable property, for the
13 purpose of paying said bonds and interest, which the said board have hitherto wholly refused, & still refuse to levy the same, or any part thereof, although expressly requested so to do; that said relator has requested said board to levy sufficient tax to pay his said judgment, which is also refused; that said relator is still the owner of said judgment; that the said several bonds, upon which said judgment was rendered, recited & certifies that they were issued by virtue of said vote of the lawful electors of said county authorizing the same, & an annual levy of taxes as aforesaid, to pay the same and interest thereon; which certificate is part of the bonds so issued, signed by the said county judge, under the seal of said county, & attested by the county clerk, and the obligation to levy such tax was part & parcel of the contract; that said bonds and coupons were made negotiable, payable to bearer in the city of New York; that said relator purchased said bonds upon the faith of said vote & contract, so to levy such tax to pay the same, and he is entitled to have sufficient tax levied by said board to pay his said judgment, and has no remedy except to compel the levy of such tax by the mandate of this court.

Now, therefore, we, being willing that full and speedy justice
14 should be done in the premises, do command you that you, with all convenient dispatch, do levy a tax upon all the taxable property within said county, as provided by said proposition adopted by the legal voters of said county at said election, sufficient to satisfy the said judgment, or that you appear before our said court on the first day of the next term thereof, to be holden at the city of Des Moines, in said district, on the 2d Tuesday of May, 1868, to show cause why you refuse so to do.

Witness Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of Des Moines, in said district of Iowa, on this 17 day of October, in the year of our Lord 1867, and of the independence of the United States the 91st.

[SEAL.]

W. G. WOODWARD,
Clerk C. C. U. S. Iowa.

15 And afterwards, to wit, on the 15th day of May, A. D. 1868, a return to said alternative writ of mandamus was filed in the office of the clerk of said circuit court in the words and figures following, to wit:

16 In the United States circuit court for the district of Iowa.

Return of the board of supervisors of Poweshiek County, Iowa, respondent.

UNITED STATES, IN RELATION TO THOS. C. DURANT,
vs.
THE BOARD OF SUPERVISORS OF POWESHIEK COUNTY.

The board of supervisors of Poweshiek County, Iowa, for return to the alternative writ of mandamus heretofore issued by said court on application made by Thomas C. Durant, relator—

Deny that by the terms of the proposition submitted by said county judge to the electors of said county, a tax not exceeding one per cent. on the taxable property in said county should be levied after ten years from the date of said bonds for the purpose of paying off said bonds and interest.

Deny that the proceedings of said county judge & court, including the submission and adoption of said proposition, acquired the force or effect of a public statute.

17 Deny that by the provisions of said vote, or by the laws of Iowa, it became, or was, or is, the legal duty of the board of supervisors of said county to levy said tax.

Respondents aver that the vote of said electors, and the proceedings of said judge & court, were without warrant or authority of law, and impose no legal obligation on said county to levy a special tax upon the taxable property therein according to the terms of the proposition submitted to the electors of said county, as in said writ recited.

That at the time of the taking of said vote there was not, nor at the time of the issuing of said bonds, nor at any time since has there been, nor is there now, any law of the State of Iowa providing for or permitting any special tax to be levied upon the taxable property in said county for the purpose of paying said bonds or the interest thereon, or any judgment therefor, or for any portion thereof.

Respondent says, on the 14th day of December, A. D. 1864, the district court of Powsheek County, State of Iowa, in a certain

18 action therein pending, Gideon Wilson, Lynch A. Johnson, Robert Taylor, Isaac G. Wilson, & John T. McIntire, sr., who sue for themselves and the tax-payers of said Powshiek County, Iowa, were plaintiffs, and the Mississippi & Missouri River Railroad Company, John M. Talbott, county judge of said Powshiek County, and his successors in office, Wm. M. Head, county treasurer of Powshiek County, and his successors in office, were defendants, of which said cause and the parties thereto the said court then had jurisdiction upon the final hearing thereof, did forever prohibit & perpetually enjoin respondent from levying, at any time, any tax or taxes whatever upon the taxable property in said county of Powshiek for the purpose of raising a fund or funds for the payment of any portion of the principal of said bonds, or for the payment of any portion of the interest coupons attached to said bonds, a copy of which said decree of perpetual injunction is hereto attached, marked Exhibit "A," and made part hereof; that said bonds and the interest coupons thereon are the same refered to in the information of relator, and said interest coupons are the same upon which the

said judgment of the relator was rendered; and respondent
19 says that said decree of injunction is still in full force and effect, and in no wise set aside, reversed, or vacated, and that said respondent cannot, without disregarding and violating said injunction & becoming liable for contempt of said court, levy said taxes as in said alternative writ of mandamus commanded.

Wherefore respondent prays judgment of this court, that the return of the respondent herein is valid, and that this court will make such order in the premises as shall be [be] required by right and justice.

ERASTUS SNOW,
President Board of Supervisors of Powshiek County.

STATE OF ILLINOIS, *Polk County:*

, being sworn, says that he is president of the board of supervisors of Powshiek County, Iowa; that he has heard the foregoing answer read; and that the matters and things therein alleged are true, as I believe.

ERASTUS SNOW.

Sworn to by the said Erastus Snow before me, and signed by him in my presence, this 14 day of , A. D. 1868.

[SEAL.] T. M. HUBBELL,
Notary Public.

20 "A."—Filed May 15, '68.

In district court of Powshiek County, State of Iowa.—Dec. term, A. D. 1864.

Final decree.

GIDEON WILSON *et al.*
vs.
J. M. TALBOTT, COUNTY JUDGE OF POWSHIEK County, Iowa—the Mississippi & Missouri R. R. Co. *et al.*

Be it remembered that at the April term, A. D. 1864, of this court, both parties, plaintiffs and defendants, being present in open court, by their attorneys, and consenting thereto, the above-entitled cause was submitted to the court for final hearing and adjudication.

And now, to wit, on the 14th day of December, A. D. 1864, it being one of the days of a regular term, the court, having fully examined and considered the pleadings filed, and evidence adduced by the parties to said cause, find that the matters, things, and allegations set forth and contained in plaintiff's are true, as therein alledged, and that the county of Powshiek, Iowa, did, as alledged in said petition, on or about the 26th day of November, A. D. 1858, subscribe for one thousand shares of one hundred dollars each of the capital stock of the Mississippi & Missouri Railroad Company, and in payment of such subscrip-
21 tion did execute and deliver to the said company one hundred bonds of one thousand dollars each, due and payable on the first day of January, A. D. 1878, with interest thereon at the rate of ten per cent. per annum, payable semi-annually, on the first days of January and July of each year, and that, for such semi-annual instalments of interest, coupons were duly signed and executed attached to said bonds.

And the court do further find that said bonds, with the said appended coupons, were executed without warrant or authority of law, and are, therefore, invalid.

The court doth, therefore, think fit, and doth so order and decree, that the injunction at the commencement of this suit, upon the order and allowance of the Hon Wm. M. Stone, judge of the 6th judicial district of the State of Iowa, be, and the same is hereby, made perpetual and binding upon all the parties to this suit, and upon all the successors in office of the said county judge and county treasurer of said county.

And the court doth further order and decree that the said John M. Talbott, county judge of the said county of Powshiek, in the State of Iowa, and all of his successors in office, whose duty it has been since
22 the commencement of this suit, or whose duty it now is or hereafter may be, to levy the taxes on the taxable property in said county, and the board of supervisors of said county, who are the successors in office of the said county judge for the purpose of levying taxes, be, and are hereby, perpetually enjoined and restrained from levying at any time any tax or taxes whatever upon said property, in said county, for the purpose of raising a fund or funds for the payment of any portion of the interest coupons attached to said bonds, for the payment of any interest or principal claimed by any person or persons upon any of said bonds, or for the payment of any judgment rendered or to be rendered upon said bonds or interest coupons; and they are enjoined and restrained from drawing, executing, or issuing, or causing to be drawn, executed, or issued, to any person any order or warrant in favor of any person, or in blank, upon the county treasurer of said county for the payment, or with the interest to pay any of the said bonds or interest coupons with any fund or moneys whatever that now are, or hereafter may be, in the treasury of said county; and the said Wm. M.
23 Head, county treasurer of said county of Powshiek, and his successors in office, whose duty has been since the commencement of [of] this suit, and whose duty it now is, or hereafter may be, to collect any or all the taxes levied or to be levied upon the taxable property in said county, are hereby forever restrained and enjoined from collecting or proceeding to collect any taxes that have been or hereafter may be levied for the purpose of paying said bonds or the said interest coupons, and are or moneys belonging to said county to any persons upon any warrant or order issued by the said county judge, or the said board of supervisors of said county for the purpose of paying said bonds or interest coupons, or any portion thereof, or any judgment rendered thereon; and it is further ordered and decreed that the defendants pay the costs of this suit.

WM. LOUGHRIDGE, *Judge.*

24 And afterwards, to wit, on the 26th day of May, A. D. 1868, there was filed in the office of the clerk of said circuit court a demurrer to defendants' answer and return, in words and figures following, to wit:

25 United States circuit court for district of Iowa.

THE UNITED STATES, EX REL. THOMAS C. DURANT, }
vs.
THE BOARD OF SUPERVISORS OF POWESHIEK COUNTY. }

The relator demurs to the return of respondents to the alternative writ issued in this cause, for that—

1st. Said return neither specifically denies the material averments of the writ, nor shows a willingness to comply with its commands.

2d. The alleged decree of the State district court, to which relator was no party, cannot lawfully debar this court of its power or right to issue any writ necessary & proper to the exercise of its jurisdiction, nor defeat relator's right to have his contract & judgment thereon enforced by this court, which has adjudged him entitled to recover his money.

3d. The said pretended decree of the State court, if valid for any purpose as against relator, would have constituted a plea in bar to his right to recover his judgment, and could only be pleaded for such purpose.

4th. Said relator, having established his right to recover by the adjudication of this court and recovered judgment therein, is entitled to
26 execution thereon, and all the usual & necessary writs and ancillary proceedings in aid of such execution, notwithstanding any proceedings in or decree of any State court in or to which relator was no party, & of which he had no notice.

5th. Said State court, without jurisdiction over the holders of said bonds, assumes to declare the said bonds invalid, only because they were supposed to be executed without warrant or authority of law. This court since then, having jurisdiction over both the maker & holder of said bonds, has adjudged said bonds to be valid & to have been executed with due authority of law, and given relator judgment thereon. Relator is therefore entitled to execution and to a writ of mandamus in aid thereof as prayed.

6th. Said pretended decree, by its own terms, binds only the parties thereto & their successors, and said relator & respondents are neither parties nor successors to any parties to said decree.

7. Said return does not sufficiently exhibit the record and proceedings in said State court, so that it may be determined whether jurisdiction was obtained by said State court, or whether its proceedings & decree is lawfully binding upon any one.

27 Wherefore relator asks judgment, and that a peremptory writ of mandamus issue as prayed.

EDMONDS & RANSON,
Atty's for Relator.

28 And afterwards, to wit, on the 21st day of October, A. D. 1868, there was filed in the office of the clerk of said circuit court a peremptory writ of mandamus, and the marshal's return thereon, in words and figures following, to wit:

29 480.—*Filed Oct.* 21, '68.

Circuit court of the United States for district of Iowa.

THE UNITED STATES, EX REL. THOMAS C. DURANT,
vs.
THE BOARD OF SUPERVISORS OF POWSHIEK COUNTY.

The President of the United States to the board of supervisors of Powshiek County, Iowa:

Whereas it has been suggested by Thomas C. Durant, the relator, a citizen of the State of New York, that on the 16th day of May, A. D. 1867, in said circuit court, in an action wherein said relator was plaintiff, and said county of Powshiek, a municipal corporation existing under

the laws of Iowa, and a citizen of the State of Iowa, was defendant, said relator recovered judgment for the sum of fifty-seven thousand one hundred and two dollars and fifty cents, together with costs against said defendant; that said court had full jurisdiction of said suit and of said parties thereto, and said judgment is still in full force, and is wholly unsatisfied; that execution therein has issued to the marshall of said district, and been by him returned wholly unsatisfied; that said defendant has no property subject to execution, or out of which said judgment may be
30 satisfied; that said judgment was rendered wholly upon coupons or interest warrants, attached to divers coupon bonds issued by said county of Powshiek, and dated on the 26th day of November, 1858, to pay the subscription of said county to the capital stock in the Mississippi & Missouri Railroad Company, to aid in the construction of its railroad through said county; that said subscription was made, and said bonds issued therefor, in pursuance of a proposition duly and legally submitted to the legal electors of said county, by the county judge of said county, at an especial election, duly appointed therefor and held on the 19th day of November, 1858, at which election, held in the several townships of said county, the said proposition was adopted by a large majority of the voters of said county; that the proposition so submitted and adopted was to the effect that said county should aid in the construction of said railroad within the limits of said county by subscribing one hundred thousand dollars of stock in said railroad company; that county bonds should be issued therefor, and in payment of such subscription to the amount of such subscription; which bonds should bear interest at the rate of ten per cent per annum, and be payable in twenty years; that an annual tax not exceeding five mills on the dollar be levied for payment of the interest semi-annually on said bonds.
31 That after ten years the rate of tax for such purpose be increased to an amount not exceeding one per cent. on the taxable property within said county, for the purpose of paying off said bonds and interest to be continued until said bonds and interest are all paid; provided that the county judge of said county may reduce the said rates in each year, in case the same will yield more than the amount required for said purpose in each year, but the rate shall in no case be less than sufficient to meet the payment of said interest and principal.

That the proceedings of said county court, including the submission and adoption of said proposition as aforesaid, were duly recorded in the office of the said county judge; whereupon, by the law of Iowa, such proposition acquired all the force and effect of a public statute; that by the laws of Iowa, the board of supervisors of said county have succeeded to all the powers and duties of said county judge, and other officers, respecting the levy of taxes, and it is their duty to levy all taxes to be collected within said county, or for county or State purposes, upon all the taxable property within said county, the assessed valuation of which is about two millions of dollars.
32 That said board annually levy taxes for other purposes, and it is and has been for seven years last past its duty to levy an annual tax upon all of said taxable property for the purpose of paying said bonds and interest, and that the said board have hitherto wholly refused, and still do refuse, to levy the same or any part thereof, although expressly requested so to do; that said relator has requested said board to levy sufficient tax to pay his said judgment, which is also refused; that said relator is still the owner of said judgment; that said several bonds upon which said judgment was rendered, recited and certifies that they were issued by virtue of said vote of the lawful

electors of said county, authorizing the same, and an annual levy of taxes as aforesaid, to pay the same and interest thereon; which certificate is part of the bonds so issued, signed by the said county judge under the seal of said county, and attested by the county clerk, and the obligation to levy such tax was part and parcel of the contract; that said bonds and coupons were made negotiable, payable to bearer in the city of New York; that said relator purchased said bonds upon the faith of said vote and contract so to levy such tax to pay the same,
33 and he is entitled to have sufficient tax levied by said board to pay his said judgment, and has no remedy except to compel the levy of such tax by or under the mandate of this court; and whereas said Thomas C. Durant, relator, filed his information in said circuit court, informing said court of the said several matters, and thereupon sued out of said court a writ of alternative mandamus, directed to said board of supervisors, commanding said board to levy a tax upon all the taxable in said county, sufficient to pay said judgment, and for that purpose, or to show cause why they refuse so to do, and said board having made return to said alternative writ, under the oath of its president, which return, upon demurrer thereto, was adjudged insufficient by said circuit court, and such further proceedings were had that it was, on the 27th day of May, A. D. 1868, adjudged by said court that the several allegations and suggestions of said relator were true, and that he was entitled to have such tax levied to pay his said judgment, by said board of supervisors, and to have a peremptory writ of mandamus therefor; and the said board abiding by said judgment of the court on such demurrer, and no further excuse or reason for not making such levy being shown to the court by the said board of supervisors:
34 Now, therefore, we, being willing that full and speedy justice should be done in the premises, do hereby command you, with all convenient dispatch, to levy a tax upon all the taxable property in said county, sufficient to pay said judgment, and for that purpose, lest in your default should come again to us.

And how you shall have executed this our writ, make known to us on the first day of the next term of our said circuit court, which will be begun and holden for said district, at the city of Des Moines, in said district, on the 3d Tuesday of October, A. D. 1868.

Witness Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of Des Moines, in the said district of Iowa, this 11th day of June, A. D. 1868, and of our independence the 93d.

W. G. WOODWARD,
Clerk C. C. U. S.

[SEAL OF THE CIRCUIT COURT OF THE U. S. DIST. OF IOWA.]

35 The writ, of which this is a true copy, came into my hands on the 10th day of June, 1868, and I served the same on the 22 day of June, 1868, by reading it to, and delivering a true copy of it to, each of the members of the board of supervisors of Poweshiek County, Iowa, to wit: On David Vandever, D. E. Cardell, Horace B. Royce, James Manalt, Daniel Dougherty, Daniel Strong, Charles Fisher, Asher Shifflet, D. J. Wherry, Joseph McDonald, M. A. Malone, A. C. Armstrong, G. J. Morgan, & William English; also on Erastus Snow, chairman of said board, by delivering to him the original writ; and on the 7th of September served the same on S. W. Snyder, by reading and delivering to him a copy of said writ; all done in the county of Poweshiek, Iowa. I also served the same on John W. Cheshire, clerk of said board, on the 22d

day of June, by reading it to him, and giving him a true copy thereof. I also exhibited the original writ to each of the foregoing-named persons so served, & I finally left the said writ with said Snow.

G. W. CLARK, *U. S. Mar.*,
By A. BOWERS, *Dep't.*

Fees:	
Service	34 00
Copies	34 00
Mileage	5 40
	$73 40

36 And afterwards, to wit, on the 26th day of October, A. D. 1868, the same being at the October term of said circuit court, the respondents filed their motion to quash the writ of peremptory mandamus in words and figures following, to wit:

37 480.—Filed Oct. 26, '68.

In U. S. circuit court, district of Iowa.

U. S., EX. REL. THOMAS C. DURANT, pl'ff,
vs.
THE BOARD OF SUPERVISORS POWESHIEK COUNTY, IOWA.

The respondents move to quash the writ of peremptory mandamus herein, because—

1. The same was issued without any order or judgment of court therefor.
2. Said writ commands respondents to collect a tax to pay the judgment mentioned, which by law they have no power to do.
3. Said writ does not follow the alternative writ.

POLK, HUBBELL & BARCROFT,
Att'ys for Respondents.

38 480.—Filed Oct. 26, 1868.

U. S. cir. court for dist. of Iowa.

Motion that clerk enter order for peremptory writ as of last term of this court.

UNITED STATES, EX REL. THOMAS C. DURANT,
v.
THE BOARD OF SUPERVISORS OF POWESHIEK COUNTY.

Comes the relator and shows this court that the clerk of this court has omitted to enter upon his journal the order of this court made at the last May term thereof, that a peremptory writ of mandamus issue against the respondents, & move the court that the said clerk enter such order upon his journal record nunc pro tunc, and for cause shows—

1. It is apparent, from the county docket, that such order was made, and the fact of making such order is within the personal knowledge of this court.

2d. The clerk's docket shows such order to have been made, & the fact is within the personal knowledge of the court.

3d. The writ of peremptory mandamus has been issued as ordered by this court, and served upon the respondents as shown by
39 the return of the marshall, and the defendants have refused to obey said writ.

4. The omission to enter such order upon the journal is simply through inadvertence of the clerk, & not through any laches of relator.

Whereupon relator asks that said order be now entered with all the effect, and the same as though entered when the order was made at last term.

EDMONDS & RANSOM,
Att'ys for Relator.

40 And afterwards, to wit, on the 28th day of October, A. D. 1868, it being of the regular term of said court, the following was ordered of record, to wit:

THE UNITED STATES, EX REL. THOMAS C. DURANT,
vs.
THE BOARD OF SUPERVISORS OF POWESHEUK County, Iowa. } No. 480.—Law.

Comes now the relator and shows this court that the clerk of this court has omitted to enter upon his journal the order of this court, made at the last May term thereof, that a peremptory writ of mandamus issue against the respondents, and move the court that the said clerk enter such order upon the journal nunc pro tunc; and the court, having heard the same, and being now sufficiently advised in the premises, sustain said motion, and order the clerk to make said entry nunc pro tunc, to wit, Wednesday, May 27th, 1868.

This cause now coming on to be heard, Edmonds & Ransom for the plaintiff's, and Polk & Hubbell for the defendants, and upon argument being had, on plaintiff's demurrer to the defendants' return to the alternative writ of mandamus, the demurrer was sustained. The de-
41 fendants abide by their demurrer. The return being insufficient, it is ordered and adjudged by the court that a peremptory writ issue in accordance with the prayer of the information.

42 480.—Filed Oct. 26, '68.

In U. S. circuit court, dist. of Iowa.

U. S., EX REL. THOMAS C. DURANT, pl't'f,
vs.
BOARD OF SUPERVISORS POWESHIEK COUNTY, def'ts.

The defendants move the court to quash the service of the writ of peremptory mandamus in this cause for the following reasons:

1. The same was not served on the respondents as the law requires.

2d. The original writ was not exhibited & read to each member of said board as the law requires.

3. The writ is directed not to the individual members of said board, but to the board generally in its collective capacity, and there is no evidence that the parties served are members of such board.

POLK, HUBBELL & BARCROFT,
Att'ys for Respondents.

43 U. S. circuit court for district of Iowa.

UNITED STATES, EX REL. THOMAS C. DURANT,
v.
THE BOARD OF SUPERVISORS OF POWESHIEK COUNTY.

Come now the relator, and shows to this court that due service of the peremptory writ issued in this cause was duly served upon each of the members of the board of supervisors of Poweshiek County (the respondents), to wit: David Vandever, D. E. Cardell, Horace B. Royce, James Mandt, Daniel Dougherty, Daniel Strong, Charles Fisher, Asher Shifflet, D. J. Wherry, Joseph McDonald, M. A. Malone, A. C. Armstrong, G. J. Morgan, William English, Erastus Snow, & S. W. Snyder.

Also show that said respondents fail to return how they have executed said writ, or to make any return whatever showing obedience to the commands of said writ, or any excuse therefor.

Said relator, therefore, moves that this court order that a writ of attachment issue, commanding the arrest and attachment of said respondents for contempt of this court, and that they be brought before this court to be dealt with and punished for contempt committed against this court, & that the costs of such proceeding be taxed to the respondents.

EDMONDS & RANSOM,
Atty's for Relator.

44 And on the same day, to wit, October 28th, A. D. 1868, the following was ordered of record, to wit:

THE UNITED STATES, EX REL. THOMAS C. DURANT,
vs.
THE BOARD OF SUPERVISORS OF POWESHIEK County, Iowa. } No. 480.—Law.

Comes now the relator, and shows to the court that due service of the peremptory writ issued in this cause was duly served upon each member of the board of supervisors of Poweshiek County (the respondents), to wit: David Vandever, D. E. Cardell, Horace B. Royce, James Mandt, Daniel Daugherty, Daniel Strong, Charles Fisher, Asher Sheflot, D. J. Wherry, Joseph McDonald, M. A. Malone, A. C. Armstrong, G. J. Morgan, William English, Erastus Snow, & S. W. Snyder. Also show that said respondents fail to return how they have executed said writ, or to make any return whatever shewing obedience to the demand of said writ, or any excuse therefor.

Said relator, therefore, moves that this court order that a writ of attachment issue, commanding the arrest and attachment of said respondents for contempt of this court, and that they be brought

45 before this court to be dealt with and punished for contempt. And the court having heard the same, and being sufficiently advised in the premises, sustain said motion, and order that a writ issue, returnable to the next term of this court, and that each of said defendants be allowed to give bail for his appearance on said attachment in the sum of $500 $\frac{00}{00}$; to which ruling of the court the respondents then and there excepted.

46 In United States circuit court, district of Iowa.

UNITED STATES, EX REL. THOMAS C. DURANT,
vs.
THE BOARD OF SUPERVISORS POWSHIEK County, Iowa. } October term, A. D. 1868.

Be it remembered that the defendants filed their motion herein to

quash the writ of peremptory mandamus issued in this cause; which said writ is in the words & figures following [here insert writ], & which motion was as follows:

In U. S. circuit court, dist. of Iowa.

U. S., EX REL. THOMAS C. DURANT,
vs.
THE BOARD OF SUPERVISORS POWSHIEK County, Iowa.

The respondents move to quash the writ of peremptory madamus, because—

1. The same was issued without any order or judgment.
2. Said writ commanded respondents to collect a tax to pay the judgment mentioned, which by law they have no power to do.

47 3d. Said writ does not follow the alternative writ.

POLK, HUBBELL & BARCROFT,
Att'ys for Respondents.

And said motion coming on for hearing, the respondents offered in evidence said peremptory writ of mandamus and the journal of said court, and upon inspection thereof it appeared that no order was entered thereon for a peremptory writ of mandamus, and thereupon, the plantiff filed his motion as follows:

U. S. cir. court for dist. of Iowa.

Motion that clerk enter order for peremptory writ as of last term of this court.

UNITED STATES, EX. REL. THOMAS C. DURANT,
vs.
THE BOARD OF SUPERVISORS OF POWSHIEK COUNTY.

Comes the relator and shews this court that the clerk of this court has omitted to enter upon his journal the order of this court, made at the last May term thereof, that a peremptory writ of mandamus issue against the respondents, and moves the court that the said clerk enter said order upon his journal record nunc pro tunc, and for cause shows—

1. It is apparent from the court's docket that such order was
48 made, and the fact of making such order is within the personal knowledge of this court.

2. The clerk's docket shows such order to have been made, & the fact is within the personal knowledge of the clerk.

3d. The writ of peremptory mandamus has been issued as ordered by this court, and served upon the respondents as shown by the return of the marshall, and the defendants have failed to obey said writ.

4. The omission to enter such order on the journal is simply through inadvertence of the clerk and not through laches of the relator.

Wherefore relator ask that said order be now entered with all the effect, and the same as though entered when the order was made at the last term.

EDMONDS & RANSON,
Atty's for Relator.

And the court, on consideration of the said motion of said relator, sustained the same, and ordered that the clerk now enter said order for the writ of peremptory mandamus as of the last May term of said court, to

which ruling upon said motion and to said order directing the
49 clerk to make said entry the respondents at the time excepted.

And thereupon said motion of respondents to quash said writ coming on to be heard, on consideration whereof the court overruled said motion and refused to quash said writ; to which ruling the respondents at the time excepted.

50 And be it further remembered that the said respondents filed their motion herein to quash the service of the writ of peremptory mandamus issued herein, & which said motion is as follows—the return of service of said writ is as follows: [Here insert return.]

In U. S. circuit court, dist. of Iowa.

U. S., EX. REL. THOMAS C. DURANT, pl'ff,
vs.
BOARD OF SUPERVISORS POWSHIEK COUNTY, def'ts.

The defendants move the court to quash the service of the writ of peremptory mandamus in this cause for the following reasons:

1. The same was not served on the respondents as the law requires.
2. The original writ was not exhibited & read to each member of said board as the law requires.
3. The writ is directed not to the individual members of said board but to the board genally in its collective capacity, and there is no evidence that the parties are members of such board.

POLK, HUBBELL & BARCROFT,
Att'ys for Respondent.

51 And said motion coming on to be heard, the court, on consideration thereof, permitted the marshall to amend his return to said writ, which the said marshall did by adding to his return thereon the following words, to wit:

"I also exhibited the original writ to each of the foregoing-named persons so served, & I finally left it with the said Snow."

To which leave of the court to amend, & to which amendment the respondents then excepted, & whereupon the court overruled said motion; to which ruling the respondents then excepted.

52 And be it further remembered that the relator filed his motion herein as follows:

U. S. circuit court for district of Iowa.

UNITED STATES, EX REL. THOMAS C. DURANT,
vs.
THE BOARD OF SUPERVISORS OF POWSHIEK COUNTY.

Come now the relator and shows to this court that due service of the peremptory writ issued in this cause was duly served upon each of the members of the board of supervisors of Powshiek County (the respondents), to wit: D. E. Cardell, Horace B. Royce, James Mandts, Daniel Dougherty, Daniel Strong, Charles Fisher, Asher Shifflet, D. J. Wherry, Joseph McDonald, M. A. Malone, A. C. Armstrong, G. J. Morgan, William English, Erastus Snow, and S. W. Snyder; also show that said respondents have failed to return how they have executed said writ, or to make any return whatever showing obedience to the command of said writ, or any excuse therefor. Said relator therefore moves that this court order that a writ of attachment issue, commanding the arrest and

attachment of said respondents for contempt of this court, and that they be brought before this court to be dealt with and punished
53 for contempt committed against this court, and that the costs of such proceeding be taxed to the said respondents.

EDMONDS & RAWSON,
Atty's for Relator.

And said motion coming on for hearing, the court on consideration thereof sustained said motion, and ordered said attachment as asked therein, to which the respondents excepted at the time, and pray that their bill of exceptions may be allowed, which is accordingly done; and on their motion, the same is ordered to be made a part of the record in this case.

SAM F. MILLER.

54 And afterwards, to wit, on the 10th day of Nov., A. D. 1868, there was filed in the office of said clerk a writ of error [was filed] in words and figures following, to wit:

55 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court for the circuit and district of Iowa:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said circuit court before you between the United States, ex rel. Thomas C. Durant, and the board of supervisors of Powshiek County, Iowa, a manifest error hath happened to the great damage of the said board of supervisors of Powshiek County, Iowa, as by their complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice be done to the parties aforesaid in this behalf: You are hereby commanded, if judgment be therein given, that then, under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday in December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be
56 done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 30th day of October, A. D. 1868.

[SEAL.] W. G. WOODWARD, *Clk.*

Allowed Nov. 7, 1868.

SAM. F. MILLER, *Judge.*

(Indorsed:) No. 480. Board of supervisors of Powshiek County, Iowa, vs. U. S., ex rel. Thomas C. Durant. Original writ of error.
Filed Nov. 10, 1868.

W. G. WOODWARD, *Clerk.*

57 Supreme Court of the United States.

BOARD OF SUPERVISORS OF POWSHIEK COUNTY, IOWA,
vs.
UNITED STATES, EX REL. THOMAS C. DURANT. } In error.

Know all men by these presents, that we, the board of supervisors

of Powshiek County, Iowa, Erastus Snow and James C. Savery, are held and firmly bound unto the above-named Thomas C. Durant, his executors or administrators, firmly by these presents. Sealed with our seals, and dated this 4th day of November, A. D. 1868.

Whereas the above-named, the board of supervisors of Powshiek County, Iowa, have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the case, in which the defendant in error was plaintiff, and the plaintiff in error was defendant, by the circuit court of the United States for the circuit and district of Iowa:

58 Now, therefore, the condition of this obligation is such that if the above-named board of supervisors of Powshiek County shall prosecute their said writ of error to effect, and answer all damages and costs, if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

ERASTUS SNOW, [SEAL.]
Pres't Board of Supervisors of Powshiek County, Iowa.
ERASTUS SNOW. [SEAL.]
J. C. SAVERY. [SEAL.]

Approved Nov. 7, 1868.

SAM. F. MILLER, *Judge.*

(Indorsed:) No. 480. Board of supervisors, Powshiek County, Iowa, vs. U. S., ex rel. Thomas C. Durant. Copy bond.
Filed Nov. 10, 1868. W. G. WOODWARD, *Clk.*

59 UNITED STATES OF AMERICA, *ss:*

To Thomas C. Durant, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be held at Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the circuit and district of Iowa, wherein the board of supervisors of Powshiek County, Iowa, is plaintiff, and the United States, ex rel. Thomas C. Durant, is defendant in error, to show cause, if any there be, why the judgement in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel F. Miller, one of the justices of the said Supreme Court of the United States, this 7 day of November, in the year of our Lord 1868.

SAM. F. MILLER,
Jud'e Cir'it Court.

60 This citation came into my hands for service on the 27th day of Nov., 1868, and I served the same on the 28 day of same month by reading it to Edmunds & Ransom, att'ys for the within-named T. C. Durant, and by delivering to them a copy at their office in Iowa City, Iowa.

F. W. CLARK, *U. S. Marshal,*
By J. S. CLARK, *Dep.*

Marshal's fees:

Mileage	$7 50
Service	2 00
Copy	50
	$10 00

(Indorsed:) No. 480. Board of supervisors Powshiek County vs. U. S., ex rel. Thomas C. Durant. Original. Citation.
Filed Nov. 10, 1868.

W. G. WOODWARD, *Clk.*

61 I, W. G. Woodward, clerk of the circuit of the United States for the district of Iowa, hereby certify that the above and foregoing is a true copy of the pleas and proceedings in the above-entitled cause, as full, true, and complete as the same remains of record & on file in my office.

Witness my name and the seal of said court hereto affixed. Done at the city of Des Moines this 5th day of December, A. D. 1868.

[SEAL.] W. G. WOODWARD, *Clerk.*

Fees for transcript	$12 00
" express	1 50
	$13 00

Paid by Polk & Hubbell.

62 In United States district court, district of Iowa.

UNITED STATES, EX REL. CLARK DURANT, *vs.* THE BOARD OF SUPERVISORS OF POWSHIEK County, Iowa. } October term, A. D. 1868.

Be it remembered that the respondents filed their motion to quash the writ of peremtory mandamus issued in this cause, which said writ is in the words and figures following (here insert writ), and which said motion was as follows:

63 In United States district court, district of Iowa.

U. S., EX REL. CLARK DURANT *v.* THE BOARD OF SUPERVISORS, POWSHIEK COUNTY.

The respondents moves to quash the writ of peremtory mandamus herein, because—

I. The same was issued without any order or judgment.

II. Said writ commanded respondents to collect a tax to pay the judgment mentioned, which by law they have no power to do.

III. Said writ does not follow the alternative writ.

POLK, HUBBARD & BARCROFT,
Att'ys for Respondents.

And said motion coming on to be heard. the respondents offered in evidence said peremtory and alternative writs of mandamus and the journal of said court, and it appearing upon inspection of said journal record that the said journal record containing the order for said peremtory writ had not been signed by the judge of said court, and the said relator having obtained leave to amend said peremtory writ of mandamus, and amended the same by striking out the word "to collect," to which
64 leave to amend, and amendment the defendant at the time excepted: and thereupon said motion coming on to be heard, the court overruled the same, to which ruling the respondent at the time excepted.

And be it further remembered that the said respondents filed their motion herein to quash the service of the writ of peremtory mandamus issued herein, which said motion was as follows.

The return service in said writ is as follows (here insert return):

The United States circuit court, district of Iowa.

U. S., EX REL. CLARKE DURANT, pl'ff,
v.
BOARD OF SUPERVISORS OF POWSHIEK COUNTY.

The defendants move the court to quash the service of the writ of peremtory mandamus in the case for the following reasons:

I. The same was not served on the respondents as the law requires.

II. The original writ was not exibited and read to each member of said board as the law requires.

III. The writ is directed not to the individual members of said board, but to the board generally in its collective capacity, and there is
65 no evidence that the parties are members of said board.

POLK, HUBBARD & BARCROFT,
Att'ys for Respondent.

And said motion coming on to be heard, the court permitted the marshal to amend his return to said writ by adding to his return therein the following words, to wit:

"I also exibited the original writ to each of the foregoing-named persons so served, & I finally left it with the said Snow."

To which leave of the court to amended & to which amendment the respondents objected, which objection the court overruled; and the defendant at the time excepted to said ruling of the court, and to said leave to amend, and to said amendment.

And be it further remembered that the relator filed his motion herein as follows:

U. S. circuit court, district of Iowa.

UNITED STATES, EX. RELATORS CLARK DURANT,
vs.
THE BOARD OF SUPERVISORS OF POWSHIEK COUNTY.

Come now the relator and shows to this court that due service of the peremtory writ of mandamus issued in this cause was duly served upon each of the members of the board of supervisors of Powshiek
66 County (the respondents), to wit: D. E. Cardell, Horace R. Royce, James Mandt, Daniel Dougherty, Daniel Strong, Charles Fisher, Asher Shefflet, D. J. Wherry, Joseph McDonald, M. A. Malone, A. C. Armstrong, G. J. Morgan, William English, Erastus Snow, & S. N. Snyder; also show that said respondents have failed to return how they have executed said writ, or to make any return whatever showing obedience to the command of said writ, or any excuse therefore. Said relator, therefore, moves that this court orders that a writ of attachment issue, commanding the arrest and attachment of said respondent for contempt of this court, and that they be brought before this court to be dealt with and punished for contempt committed against this court, and that the costs of said proceedings be taxed to said respondents.

EDMONDS & RAWSON,
Att'ys for Relator.

And said motion coming on for hearing, the court in consideration thereby sustained said motion, and ordered said writ of attachment as asked therein, to which ruling and order of the court the respondents at the time excepted, and pray that their bill of exception in this behalf be allowed, which is accordingly done; and on their motion the same is ordered to be a part of the record in this case.

(Sign.) SAM. F. MILLER. [SEAL]

(Indorsed:) No. 428. U. S., ex rel. Clerk M. Durant, vs. Poweshiek County. Bill of exceptions. Filed 12 January, 1869. Fees, $1.25/100.

67 In Supreme Court of the United States.

THE BOARD OF SUPERVISORS OF Powshiek County, Iowa. *vs.* U. S., EX. REL. THOMAS C. DURANT. } In error.

Assignment of errors.

And now comes the plaintiff in error, and says there is manifest error in the record and judment herein in this, to wit:

1st. That said court, without disposing of the demurrer of the relator to the return of respondent, issued a peremptory writ of mandamus.

2d. That said court, notwithstanding the return of the respondent, which was sufficient and valid, issued said peremptory writ of mandamus herein.

3d. That said court overruled the motion of the respondent to quash the peremptory writ of mandamus herein, for the reasons in said motion set forth and shown by said record.

4th. That said court overruled the motion of the respondent to quash the service of the writ of peremptory mandamus for the causes therein set forth & shown by the record herein.

5th. That said court sustained the motion of the relator to
68 enter an order for peremptory writ of mandamus nunc pro tunc, for the reasons therein set forth.

6. That said court ordered a writ of attachment to issue commanding the arrest and attachment of said respondents for contempt of court.

7th. That said court rendered judgement against said respondents for costs.

For which, and for divers other good and sufficient, reasons appearing in said record, pl'ff in error prays that the order that a writ of attachment issue commanding the arrest and attachment of said respondents be set aside & the judgement against them be reversed.

POLK, HUBBEL & BARCROFT,
Att'ys for Pl'ff.

(Indorsed:) No. 428. Board supervisors of Powshiek County vs. U. S., ex. rel. Thos. C. Durant. Assignment of error. Filed 12 January, 1869. Polk, Hubbell & Barcroft, att'ys for pl'ff in error.

SUPREME COURT

OF THE UNITED STATES.

December Term, 1869.

No 428 old 201

THE BOARD OF SUPERVISORS OF POWESHIEK COUNTY,
Plaintiffs in Error,
vs.
THOMAS C. DURANT,
Defendant in Error.

Error to the Circuit Court for the District of Iowa.

POINTS FOR DEFENDANT IN ERROR.

It will be observed that pages 18 and 19 of the printed record in this cause consist of parts of the record of another cause (U. S. ex. *Clark* Durant vs. The Board of Supervisors) of similar nature and decided at same term of Circuit Court, and now in this Court on writ of error and the next one below this on the docket of this Court. In this case there was no motion to amend the peremptory writ as in the case of Clark Durant. Those pages may therefore be dismissed from further consideratiou.

On the 16th day of May, 1867, Thos. C. Durant recovered

judgment against Poweshiek County, in the Circuit Court for Iowa, for $57,102 50.

Execution was issued and returned *nulla bona.*

A demand of the Board to levy a tax to pay the judgment was made and refused.

An alternative writ issued to which respondents made return, denying it was their duty to levy the tax and averring that the State Court had forbidden the levy.

To this return the relator demurred for the various reasons set forth on page 8 of printed record. The demurrer was sustained. A peremptory writ issued and was duly served.

The order for the peremptory writ was entered by both Judge and Clerk upon their respective dockets, but the Clerk had omitted to enter it upon his journal. This entry was subsequently ordered to be made *nunc pro tunc.* Such practice is sanctioned. Gray v. Brignardello, 1 Wall., 627, and is common in the Iowa State Courts in both civil and criminal practice.

The State v. Munzemaier, 24 Iowa, R. 87, Buckwalter v. Craig, *id.* 215.

The Court also permitted the Marshal to amend his return of service of the peremptory writ by adding that he "showed "the original writ to each respondent and finally left it with "the president of the Board."

It is a matter of everyday practice to permit an officer to amend his return of service, especially at such a stage of the proceedings.

But the return of service was probably good without the amendment.

See Regina v. The Birmingham R. Co., 16 Eng. L. & Eq. R. 94.

These are the rulings to which Plff's in Error except. They have superceded the further action of the Court since Oct. 1868. That the writ is merely for delay is too apparent for comment.

We pray the Court to affirm with such damages as will discourage trifling with legal forms.

EDMONDS & RANSOM,

Attorneys for Deft. in Error.

I. Court of Counsel